Nos. 79-1890 and 79-1904

In the Supreme Court of the United States

OCTOBER TERM, 1980

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

STATE OF ALASKA

KENAI PENINSULA BOROUGH, PETITIONER

v.

STATE OF ALASKA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL PETITIONERS

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QUESTION PRESENTED

Whether revenues from federal oil and gas and other mineral leases covering withdrawn public lands

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[1] The other petitioners in No. 79-1890 are the Secretary of the Treasury and the Comptroller General.

in federal wildlife refuges in Alaska are to be distributed according to the formula established by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, which allocates 25 percent of the revenues to the counties in which such lands are located and reserves 75 percent for federal purposes related to the Act, rather than according to the formula established by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which provides that 90 percent of such revenues be paid to the State of Alaska and 10 percent be covered into the United States Treasury.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a)[2] is reported at 612 F.2d 1210. The opinion of the district court (Pet. App. C, 15a-25a) is reported at 436 F. Supp. 288.

JURISDICTION

The judgment of the court of appeals (Pet. App. 13a-14a) was entered on February 5, 1980. On April 29, 1980, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to June 2, 1980. The petition in No. 79-1890 was filed May 30; the petition in No. 79-1904 was filed June 2; both petitions were granted on October 6, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. (Supp. II) 715s, provides in pertinent part:

> (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of * * * minerals * * * during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treas-

[2] All references are to petition No. 79-1890, filed by the federal petitioners.

ury and be reserved in a separate fund for disposition as hereafter prescribed. * * * The National Wildlife Refuge System (hereafter referred to as the "system") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

* * * * *

(c)(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided,* That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area.

* * * * *

(g) As used in this section—

* * * * *

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, provides in pertinent part:

> All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C. 1019], shall be paid into the Treasury of the United States; * * * of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: * * *

Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, provides in pertinent part:

> All receipts derived from leases issued under the authority of this Act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands * * *.

STATEMENT

The Kenai National Moose Range is part of the National Wildlife Refuge System administered by the Fish and Wildlife Service in the Department of the Interior. It was established in 1941, when Executive Order No. 8,979, 6 Fed. Reg. 6471 (1941), withdrew and reserved approximately two million acres of public land on Kenai Peninsula in Alaska for "use * * * as a refuge and breeding ground for moose." [3]

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[3] On May 22, 1964, Public Land Order No. 3400, 29 Fed. Reg. 7094-7095 (1964), enlarged the Kenai Range by approximately 40,115 acres of public land withdrawn and re-

At all times, large portions of the Range have been open to oil and gas leasing—albeit under special conditions. See *Udall* v. *Tallman*, 380 U.S. 1 (1965). Such leases were first issued in the mid 1950's (*id.* at 7-16) and continue in effect to this day. Substantial revenues from rents, royalties and bonuses have resulted,[4] and the question presented here is how these monies should be apportioned between the federal government and either the State of Alaska or the Borough of Kenai.

1. Before 1964, revenues generated from lands in federal wildlife refuges were arguably subject to

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served "from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws."

[4] Payments totalling some $57 million were received between 1966 and 1976 (J.A. 66). ("J.A." refers to the printed appendix in this Court; "R." refers to the Clerk's Record filed in the court of appeals.) Since 1976, when the present suits were filed, funds representing a 90 percent share of the oil and gas leasing revenues have been placed in an escrow account pending the outcome of this litigation (see J.A. 27). We are advised by the Department of the Interior that the account now contains more than $23 million, including small sums from other reserved refuge lands. In addition, we are advised by the United States Geological Survey that, while the Kenai Range is, at present, the only refuge in Alaska generating oil and gas revenues, substantial volumes of recoverable oil and gas are believed to underlie several of the 17 other existing wildlife refuges in Alaska, including those recently withdrawn by the Secretary of the Interior on February 12, 1980, 45 Fed. Reg. 9562. The most notable of these is the Arctic National Wildlife Range established in 1960 (25 Fed. Reg. 12598) (1960) (renamed the William O. Douglas Arctic Wildlife Range by Pres. Proc. No. 4729 (Feb. 29, 1980), 16 Weekly Comp. of Pres. Doc. 419-420 (Mar. 3, 1980)), in Northeast Alaska. See generally B. Miller, *et al.*, Geological Survey Circular 725, *Geological Estimates of Undiscovered Recoverable Oil and Gas Resources in the United States* 4-5, 16-17, 24-25, 33 (1975).

distribution under one or more of at least three statutes. The first was Section 401 of the Act of June 15, 1935, ch. 261, 49 Stat. 383 (now codified at 16 U.S.C. (Supp. II) 715s), which allocated to affected counties 25 percent of receipts from "the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel and from other privileges on refuges." After 1950, any remaining funds were to be used by the Secretary of the Interior for management of the refuges. 64 Stat. 693-694.[5] The quoted provision of the 1935 Act governed revenues from all refuge lands administered by the Fish and Wildlife Service, whether withdrawn from the public domain or later acquired by the United States.[6] But it is not clear whether oil and gas lease receipts were included within the distribution scheme of the statute. See pages 24-31, *infra.*

So far as wildlife refuges were made up of acquired lands, that issue was mooted in 1947 by the passage of the Mineral Leasing Act for Acquired Lands (Act of August 7, 1947, ch. 513, 61 Stat. 913, now codified at 30 U.S.C. 351 *et seq.*). Section 3

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[5] Under subsequent amendments to the Act, any net receipts in excess of the amount required for distribution under the Act, are to be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges under the Migratory Bird Conservation Act. Pub. L. No. 95-469, Section 1(a)(3), 92 Stat. 1319, 16 U.S.C. (Supp. II) 715s(e).

[6] In general, "acquired lands" are those granted or sold to the United States by a state or citizen, while "public domain lands" are those which were never in state or private ownership. See *Wallis* v. *Pan American Pet. Corp.*, 384 U.S. 63, 65 n.2 (1966). Hereinafter, we use the terms "public domain" and "public lands" interchangeably, and speak of "withdrawn" or "reserved" lands to denote areas of the public domain dedicated to refuge or other special purposes.

of the statute, 30 U.S.C. 352, authorized leasing of specified minerals, including oil and gas, on lands acquired by the United States, and Section 6, 30 U.S.C. 355, provided that such leasing revenues "be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." In the case of federal wildlife refuges, this meant that the revenues were apportioned between counties and the federal government in accordance with the formula of the 1935 Act.

Oil and gas leasing revenues generated on refuges withdrawn from the public domain were arguably subject to distribution under the provisions of Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191,[7] which, since 1957, allocates 90 percent of included receipts to the State of Alaska.[8] Although

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[7] The Mineral Leasing Act covers the disposition of revenues generated from coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock, and gas. 30 U.S.C. 181.

[8] The Act of May 27, 1947, ch. 83, 61 Stat. 119, amended the Mineral Leasing Act to provide that 37½ percent of the revenues received from sales, bonuses, royalties, and rentals of public lands in the Territory of Alaska be distributed to the Territory for the construction and maintenance of public schools or other public educational institutions. In 1957, the Mineral Leasing Act was again amended to provide for an additional 52½ percent to be paid to the Territory of Alaska for disposition by the legislature of the Territory. Pub. L. No. 85-88, Section 2, 71 Stat. 282. That formula was retained when Alaska became a State in 1959. See Sections 6(k) and 28(b) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 343, 351.

States other than Alaska at that time received only a 37½ percent share of mineral leasing revenues on reserved public land within their borders, the remaining 52½ percent share going to the Federal Reclamation Fund. Amendments to the Mineral Leasing Act in 1976 raised the share of these other states to 50 percent. Pub. L. No. 94-579, 90 Stat. 2770-2771.

this is far from clear as a matter of law (see pages 22-31, *infra*), it is a fact that oil and gas lease revenues from the Kenai Range, covering reserved lands, were distributed under the Mineral Leasing Act of 1920—90 percent being paid to the State.

2. In 1964, Congress amended the Wildlife Refuge Revenue Sharing Act in several respects. Pub. L. No. 88-523, 78 Stat. 701-702. One change was the addition of the term "minerals" to the list of sources for refuge revenues that are to be distributed according to the allocation provisions of the statute. Section 401(a), 78 Stat. 701, 16 U.S.C. 715s(a). There were also added new provisions differentiating, with respect to the formula for payments to counties, between acquired lands and reserved public lands. However, the rule that counties would receive 25 percent of revenues from reserved lands within refuges was retained. Section 401(c)(1), 78 Stat. 701.[9]

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[9] Under the 1964 amendment, an additional payment option was provided with respect to acquired lands. Section 401(c)(2), 78 Stat. 701. Counties whose borders enclosed wildlife refuge land acquired by the United States in fee were to receive "three-fourths of 1 per centum of the cost of the areas * * *" or 25 percent of resource revenues collected from the lands, whichever was greater. In 1978, this provision was further amended to include a third option. Now a county may take 75 cents per acre of refuge land located within the county or either of the above options, whichever is greater. Pub. L. No. 95-469, 92 Stat. 1319, 16 U.S.C. (Supp. II) 715s(c)(1)(A). The amendments did not change the distribution formula for reserved lands in wildlife refuges. The 1978 amendments, however, included reserved lands within the benefits of the Payment In Lieu of Taxes Act, Pub. L. No. 94-565, 90 Stat. 2662, 31 U.S.C. 1601 *et seq.* See 16 U.S.C. (Supp. II) 715s(h). Under this statute, counties embracing reserved refuge lands are entitled, in addition to the amount received under the Wildlife Refuge Revenue Shar-

Notwithstanding the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, the Department of the Interior continued, until 1975, to distribute oil and gas lease revenues from the Kenai Range under Section 35 of the 1920 Act—90 percent to Alaska and 10 percent to the General Fund of the Treasury (J.A. 59).[10]

In 1975, the Director of the Fish and Wildlife Service, who is responsible for administration of the National Wildlife Refuge System, including the Kenai Range inquired of the Solicitor of the Interior Department whether the 1964 amendment to 16 U.S.C. 715s changed the requirements of the Mineral Leasing Act "as to receipts from oil and gas leases on refuges created by withdrawals of public lands" (Pet. App. 26a). The Solicitor responded that the 1964 amendment "irreconcilably" conflicted with Section 35 of the Mineral Leasing Act as to the treatment of oil and gas revenues from reserved public land within the National Wildlife Refuge System; and he concluded that the more recent statute governs (*id.* at 26a-33a).

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ing Act, to 75 cents per acre of reserved lands less receipts received under the Refuge Act, or 10 cents per acre of reserved lands, whichever is greater. 31 U.S.C. 1602, 1604.

[10] After enactment on December 18, 1971, of Section 9(d) of the Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 695, 43 U.S.C. 1608(d), the computation of the State (90 percent) and federal (10 percent) shares was made on net revenues after the deduction of the amount (2 percent of gross royalties) paid into the Alaska Native the Alaska Native Fund. The fund was fully paid as of June Fund. No party has disputed the 2 percent distribution to 30, 1980. Appendix B, *infra*.

The Solicitor then asked the Comptroller General whether he agreed. The Comptroller General issued a concurring decision on July 29, 1975 (55 Comp. Gen. 117; Pet. App. 34a-41a). The State of Alaska objected and requested reconsideration. On June 11, 1976, the Comptroller General, after reviewing a second memorandum from the Solicitor which reached the same conclusion as the first, as well as another objection by the State, affirmed his original decision (Pet. App. 42a-58a).

3. In 1976, Kenai Peninsula Borough, a political subdivision of Alaska and a "county" for the purposes of the Wildlife Refuge Revenue Sharing Act (see 16 U.S.C. (Supp. II) 715s(g)(5)), sued the Secretary of the Interior seeking a declaration that 16 U.S.C. 715s controlled the distribution of oil and gas revenues on reserved public land within the Kenai Range, and an order requiring the Secretary to pay the Borough 25 percent of such revenues, to account for past payments of such revenues made to the State of Alaska, and to recover such past payments for Kenai's benefit (J.A. 16-24). Immediately thereafter, the State of Alaska sued the Secretary of the Interior, the Comptroller General, and the Secretary of the Treasury seeking a declaration that distribution of oil and gas revenues on reserved public land within the National Wildlife Refuge System was at all times governed by Section 35 of the Mineral Leasing Act (J.A. 8-15). The State also sought a resumption of the 90 percent payments out of such revenues to the State, and the invalidation of the two decisions of the Comptroller General as "of no legal effect" (J.A. 14). The district court ordered consolidation of the two lawsuits (J.A. 25-26).[11]

[11] After obtaining leave of court (J.A. 35), Kenai intervened as a defendant in the consolidated cases (see J.A. 36-49).

On August 17, 1977, the district court granted summary judgment to the State of Alaska, holding that Section 35 of the Mineral Leasing Act controlled the distribution of oil and gas revenues from reserved public land within the Kenai Range both before and after the 1964 amendment to 16 U.S.C. 715s, and that the Wildlife Refuge Revenue Sharing Act governed distribution of only those "mineral" revenues derived from acquired refuge lands (Pet. App. 15a-25a).

The court of appeals affirmed, concluding that the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act "must be read to apply only to acquired refuge lands and not to reserved refuge lands" (Pet. App. 11a). In reaching this result, the court acknowledged that the plain meaning of the language of the statute "fairly brings the Kenai Moose Range oil and gas revenues within its scope" (*id.* at 7a), but it concluded that application of the plain meaning rule was inappropriate in the circumstances of this case, where it would produce a conflict with another statute, the Mineral Leasing Act. In the absence of any indication in the legislative history of the 1964 amendments to 16 U.S.C. 715s that Congress intended to repeal any part of the Mineral Leasing Act, the court declined to find what it termed a repeal by implication (Pet. App. 7a-12a).[12] In addition, the court stated, without dis-

[12] As the court of appeals noted (Pet. App. 10a n.6), 16 U.S.C. 715s underwent another major revision in 1978, in the course of which the House proposed amending subsection (a) so as to ensure that the statute would be construed, at least in the future, as applying to oil and gas revenues from reserved lands, as well as from acquired lands. H.R. Rep. No. 95-1197, 95th Cong., 2d Sess. 1, 8 (1978). That clarifying provision was, however, removed by the Senate Committee on Environment and Public Works, which decided to leave

cussion, that this interpretation would avoid "other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act" (*id.* at 11a). The court also drew support for its conclusion from the Interior Department's adherence to the Mineral Leasing Act formula up to 1975 in disbursing revenue to the State from the oil and gas leases in the Kenai Range (*id.* at 11a-12a).

SUMMARY OF ARGUMENT

A.

The only question presented is whether the Wildlife Refuge Revenue Sharing Act, as amended in 1964, governs the distribution of federal revenues from oil and gas leases covering areas of the public domain withdrawn for refuge purposes. On the face of the text, as both courts below recognized, the answer is a clear affirmative. In our submission, this is an occasion for applying the "plain meaning" rule of statutory construction.

Assuming the 1964 statute changed the law in this respect, it is unfortunate that Congress did not expressly indicate an intent to repeal or amend. But, given the unambiguous language of the new provision, specific in its coverage and wholly reasonable in its effect, we submit that the legislative branch must be taken at its word. In our view, there is no reason to go beyond the text.

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the statute in essentially the same form. The Committee explained that it was "inappropriate to legislate on this matter pending a determination by the court, and [that the Committee] takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95-1174, 95th Cong., 2d Sess. 4, 8 (1978).

B.

The legislative history of the 1964 amendment is inconclusive. Because the prime focus was on increasing, and making more equitable, the distribution of refuge revenues to counties where acquired lands were involved, it is not entirely surprising to find no express recognition that the revised statute would also affect payments from areas withdrawn from the public domain. On the other hand, there is some basis for supposing that Congress believed it was making no change in this respect. What is tolerably clear, however, is that oil and gas revenue from *all* refuges were intended henceforth to be subject to the amended Wildlife Refuge Revenue Sharing Act. If this is so, it cannot matter whether Congress thought it was enacting a new rule for "public land" refuges, or confirming the previous law, or resolving an existing doubt.

There is, indeed, substantial indication that the administrators of the refuge system then read a statute of 1935—unquestionably applicable to all refuges under the primary jurisdiction of the Fish and Wildlife Service—as encompassing oil and gas lease revenues, and requiring allocation of 25 percent to affected counties. So believing, they appear to have conveyed that opinion to the relevant Committees of both Houses during the hearings that preceded the 1964 amendment. Whether or not this was a correct view of the law is not dispositive. It seems probable that Congress acted on that premise. But, in any event, there is no basis for doubting that the amendment means what it says.

To be sure, the actual practice of the Department of the Interior did not consistently follow the law as some of its senior officials apparently understood it. And, in the case of the Kenai Range, the 1964 amend-

ment was ignored for a decade. Yet, when the matter received careful and thorough consideration, the Department unambiguously voiced its view and was sustained on full re-examination by the Comptroller General. In our submission, those final administrative rulings are entitled to confirmation by this Court.

C.

The suggestion that our reading of the 1964 amendment of the Wildlife Refuge Revenue Sharing Act creates a conflict with the Alaska Statehood Act and the Alaska Native Claims Settlement Act is without substance. At best, the provisions invoked merely grant the State or the Natives a specified share of revenues distributed pursuant to the Mineral Leasing Act of 1920. Nothing prevented Congress from removing wildlife refuge oil and gas revenues from that distribution scheme—assuming they were within it before 1964.

ARGUMENT

Very seldom is this Court called upon to construe a statutory text so unambiguous on its face that resort to extraneous materials is unnecessary. This, we submit, is that rare case. Accordingly, we urge the Court to apply here "the admittedly old-fashioned but nonetheless still entirely appropriate 'plain meaning' canon of statutory construction." *United States* v. *Clarke*, No. 78-1693 (March 18, 1980), slip op. 1. If we go beyond the words of the statute, it is only out of an abundance of caution and without suggesting the necessity—or even the propriety—of such excursions.

A. THE PLAIN MEANING OF THE STATUTORY TEXT AND OTHER CANONS OF CONSTRUCTION

1. The controlling statutory text is not in the least ambiguous. As amended in 1964, the Wildlife

Refuge Revenue Sharing Act, 16 U.S.C. (Supp. II) 715s,[13] expressly directs that, henceforth, "all revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel" within federal wildlife refuges administered by the Fish and Wildlife Service shall be "reserved in a separate fund for disposition as hereafter prescribed" (Section 715s (a)). And the statute goes on to specify that, at the end of each fiscal year, a portion of these revenues shall be distributed to the counties embraced by the refuge, a flat 25 per cent of net receipts in the case of "any reserve area" (Section 715s(c)(2)), expressly defined as "land withdrawn from the public domain" for wildlife refuge purposes (Section 715s(g)(3)). Alternative formulae, potentially more generous, are specified for counties embraced within refuges created out of "fee areas" (Section 715s(c)(1)), defined as lands "acquired in fee by the United States" (Section 715s(g)(2)). It is further provided that any net receipts remaining after these payments to counties "shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges" (Section 715s(e)). No distinction is drawn between mineral revenues and receipts from other natural resources.

So far as the statutory text controls, there is no room for argument: receipts from mineral leases, like

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[13] We quote the current provisions, as last amended in 1978. Although the subsections have been somewhat rearranged and various changes have been made, it is not suggested that any of the amendments after 1964 affects the issue presented here. For the changes, see notes following 16 U.S.C. (1976 ed.) 715s(g) and 16 U.S.C. (Supp. II) 715s(h).

all other revenues generated within wildlife refuges, whether made up of "reserved" lands or "acquired" lands, are to be apportioned between the counties and the federal Migratory Bird Conservation Fund—no part going to the State. There is simply no way of singling out mineral revenues derived from refuges comprised of withdrawn public lands and exempting these from the scheme of the Wildlife Refuge Revenue Sharing Act. Indeed, the district court below concluded that "there is nothing in 16 U.S.C. § 715s which would support a restrictive construction of the word 'minerals' " and that "a literal approach of statutory construction would dictate an expansive definition including both reserved and acquired lands" (Pet. App. 21a). And the court of appeals likewise recognized that "under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within its scope" (Pet. App. 7a).

2. Once it is clear that the enactment compels a given result, only very unusual circumstances can justify a court in holding that Congress did not really *mean* what it *said*. One does not lightly assume a slip of the legislative pen. Certainly, it is not enough to notice that the Legislature did not explain itself: it is not required to do so. Nor will it suffice to point out that a "literal" reading of the statute works a change in the law: that is what legislation is usually intended to do. Indeed, if possible, we must *prefer* a construction that does not render the text pointless.

Of course, when literalism would produce a nonsensical result, which it would be insulting to attribute to the legislative branch, the courts will strain to avoid it. But there can be no such suggestion here. Plainly, there is nothing unnatural, or even odd,

about a scheme of revenue sharing that returns a portion to the immediately affected locality, rather than to the State at large, and that applies the same distribution formula to mineral receipts as to revenues from other refuge resources.

Nor is it possible, in this instance, to say that the new statute serves a quite sufficient end without stretching it to the limits of its language. The fact is that the addition of the word "minerals" to the Wildlife Refuge Revenue Sharing Act in 1964 accomplished precisely nothing if it reaches only leases of acquired lands. Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, had long since ordained that revenues from mineral leases of acquired lands "shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." Hence, any sharing formula established for wildlife refuges encompassing acquired lands would automatically attach to mineral revenues, as well as revenues from the resources specified in the Refuge Act. There was no arguable ambiguity on that score, and, therefore, no useful purpose to be served—not even clarification—in stipulating once again how mineral revenues from acquired lands within wildlife refuges would be distributed. Thus, to explain the 1964 amendment to the Wildlife Refuge Revenue Sharing Act—insofar as it added minerals to the list of revenue sources governed by the special distribution formula—as reaching only acquired lands, is to say that Congress was engaged in a wholly superfluous action.

3. What, then, is the justification for not giving the text its plain meaning? It is said that the straightforward reading of the Wildlife Refuge Revenue Sharing Act, as it affects mineral leases on refuges made

up of reserved lands, would produce an "irreconcilable conflict" with an earlier statute, which was not expressly repealed. The reference is to Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. 191, which directs the payment directly to the State of a share—in the case of Alaska 90 percent—of certain mineral revenues received from "public lands." The courts below found "no clear foundation for an implied repeal" of that provision so far as it governs distribution of mineral revenues from refuge lands (Pet. App. 10a-11a, 25a). In our view, this was a wholly insufficient basis for ignoring the plain mandate of Congress.

Of course, "repeals by implication are not favored." *Morton* v. *Mancari*, 417 U.S. 535, 549 (1974), quoting *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936). But that sound canon is of doubtful force when a specific statute, far from wholly "repealing" the general law, merely carves out a very limited exception. Let us suppose, for instance, that the chronology considered in *Morton* v. *Mancari* had been reversed: that the Indian Preference law had been enacted some years *after* the general ban against governmental discrimination in employment. Even in the absence of any reference to the general law in the text or legislative history of the Indian Preference statute, there surely would have been no hesitation in applying the latter provision as written. That would be compelled on the obvious ground that the Indian law was a specific, more recent, declaration of the legislative will that created a special rule.

When the text of a new statute, dealing with a discrete subject, is unambiguous, it must be given effect even if it unquestionably alters the previous law in one respect. In our submission, that principle governs here and there is no occasion to go further.

B. THE LEGISLATIVE HISTORY AND ADMINISTRATIVE CONSTRUCTION: CHANGE OF LAW OR CLARIFICATION OF PREVIOUS AMBIGUITY?

It is nevertheless insisted that we should examine the legislative history of the 1964 amendment to determine whether Congress really intended to change the law. If we do so, however, the search proves inconclusive. As the court of appeals rightly said, "the legislative history of the 1964 amendments to 16 U.S.C. § 715s sheds no direct light on the issue here" (Pet. App. 8a). But, contrary to what the courts below suggested (Pet. App. 9a & n.5, 11a n.7, 23a-24a), the few indications there are do not all point in one direction.

1. The district court relied primarily on the fact that, in a statistical chart comparing actual revenues from refuges received by counties in 1963 and those estimated in consequence of the proposed amendment, the Department of the Interior indicated no change in the amounts from the Kenai Range, made up entirely of reserved lands. Yet, if 25 percent of mineral revenues from such lands were, in future, to be distributed to the affected county—rather than 90 percent to the State, as was then presumably the rule—an increase should have been shown in this instance. See Pet. App. 23a-24a. The point is well taken.[14] It is, however, a wholly inadequate basis to

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[14] Not so the district court's other argument from the legislative history: That Congress believed the retained share of refuge revenues would decrease under the amendment, whereas it would increase if henceforth 75 percent, rather than 52½ percent (or 10 percent in the case of Alaska), of mineral revenues from reserved public lands were to be retained (Pet. App. 24a). As of 1963, considering the relatively small revenues from this source, it was not improbable

make "a jump to conclude * * * that Congress positively intended no change," as the court of appeals recognized (Pet. App. 9a n.5). The primary purpose of the 1964 amendments was to improve the distribution scheme for revenues from *acquired* refuge land (see Pet. App. 8a, 22a),[15] and it would not be surprising if the legislators overlooked, in an exhibit of many pages, a single disparity in one entry relating to a wholly separate matter.[16]

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that the effect of the more generous formula for acquired lands would be to produce a net diminution of the overall federal share of refuge revenues.

[15] The chief impetus for the 1964 amendments was the need to assure adequate payments to counties in which the United States was seeking to acquire lands for wildlife refuges—in particular wetlands—since, under the Wetlands Act of 1961, Pub. L. No. 87-383, 75 Stat. 813, the governor of a state or an appropriate state agency could veto acquisitions effected under that statute. S. Rep. No. 1096, 88th Cong., 2d Sess. 5 (1964); H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2 (1964). Therefore the greatest part of the comments on the proposed bills focused on the provisions for assuring payments to counties in which land acquired for refuges would produce little, if any, revenues.

[16] Indeed, even if one assumes they focussed on the statistical tables insofar as they reflected the effect of the proposed amendment on the payments to counties from *reserved* lands, it may be doubted whether the Members of the Senate and House Committee relied on the chart invoked by the district court, submitted in 1964. As we notice in a moment, the addition of the word "minerals" to 16 U.S.C. 715s had been adopted in 1962, when the comparable statistical table specifically avoided any indication of the anticipated payments to counties from "public land" areas under the proposed amendment. See S. Rep. No. 1919, 87th Cong., 2d Sess. 10 & nn.1 and 2 (1962) (R. 407).

For the same reason, no reliable inference can be drawn from Congressional silence on the effect of adding the word "minerals" to the resources subject to the Wildlife Refuge Revenue Sharing Act. The focus was elsewhere, and, except in Alaska, the practical consequences would be minimal.[17] On the other hand, it is wholly unlikely that the addition of mineral revenues as governed by the Act passed unnoticed. Whether or not the monetary *consequences* were fully appreciated, it is tolerably clear that the textual change was knowingly made.

This was not a last-minute "technical" amendment. The suggestion of inserting the word "minerals" in the opening paragraph of 16 U.S.C. 715s was put forward in mid-1962, when the Department of the Interior submitted a substitute bill for those then pending before the House and Senate.[18] Although the proposal was not highlighted,[19] it could hardly

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[17] In fiscal 1964, the total revenues from oil and gas leases of reserved lands within wildlife refuges in the "lower 48" States was $3,143, and the total from that source during the ten-year period 1966-1975 was only $48,182.58. Affidavit of Lynn A. Greenwalt, Director of the U.S. Fish and Wildlife Service 2-3, in Brief for the Federal Appellants in the court of appeals at 41-43, reproduced as Appendix A to the present brief, *infra*.

[18] Report of the Department of the Interior dated June 20, 1962, in S. Rep. No. 1919, *supra*, at 13, 15 (R. 410, 412); Report of the Department of the Interior of June 22, 1962, in *Authorize Increased Payments to Counties for Wildlife Refuges: Hearings on H.R. 10714, H.R. 11525, H.R. 11535, H.R. 12143 and H.R. 12144 Before the Subcomm. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries*, 87th Cong., 2d Sess. 7, 9 (1962) (hereinafter "1962 House Hearings") (R. 487, 489).

[19] The change was presumably encompassed in the statement that "our draft contains various perfecting * * * pro-

have escaped notice. Not only was the change located in the very first sentence of the proferred new text, but it was combined with a longer addition for revenues "from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes of particular areas of that System." Later the same year, the relevant Committees of both the Senate and the House adopted the suggested new language,[20] and that text was before the Congress for the ensuing two years.[21] In these circumstances, it would be bold to assert that the amendment was somehow inadvertent.

The upshot is that the legislative history of the 1964 Wildlife Refuge Revenue Sharing Act cannot be invoked to demonstrate that Congress did not mean what it said when it unambiguously subjected mineral revenues from *all* refuges administered by the Fish and Wildlife Service to a distribution scheme for the benefit of counties, rather than States. There is, accordingly, no pretext for avoiding the plain words of the text, settled in 1962 and enacted in 1964, according to which 25 percent of oil and gas lease revenues from reserved wildlife refuge lands are payable to the affected counties and the balance goes into the special conservation fund. If the consequence is at odds with legislative expectations, Congress remains free to revise the statute—something it has thus far declined to do.[22]

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visions." S. Rep. No. 1919, *supra*, at 2 (R. 399); H.R. Rep. No. 2499, 87th Cong., 2d Sess. 4 (1962) (R. 390).

[20] S. Rep. No. 1919, *supra*, at 19 (R. 416); H.R. Rep. No. 2499, *supra*, at 9 (R. 395).

[21] See S. Rep. No. 1096, 88th Cong., 2d Sess. 31 (1964) (R. 644); H.R. Rep. No. 1753, 88th Cong., 2d Sess. 22 (1964) (R. 611).

[22] See Pet. App. 9a-10a n.6; Statement, *supra*, pages 10-11 n.12.

2. Given the plain meaning of the statute and the absence of any sufficient basis for supposing a legislative lapse, it cannot matter whether Congress appreciated that it was ordaining a new distribution formula for mineral revenues from reserved refuge lands. But, as it happens, there is reason to question whether any change of law was involved, or at least, cause to suggest that the Congress of 1964 may have believed it was merely clarifying a pre-existing doubt. If that is so, it is hardly surprising that the express inclusion of minerals among the revenue sources subject to the sharing scheme provoked no comment.

The major premise of the decisions below is that, before 1964, oil and gas leases covering wildlife refuges made up of lands withdrawn from the public domain were in all respects governed by the Mineral Leasing Act of 1920, including its revenue sharing formula, which, in the case of Alaska, required payment of 90 percent of the net receipts to the State. 30 U.S.C. 191. But that is perhaps not a correct assumption, and, more importantly, was probably not the understanding of the 1964 Congress. More likely, the accepted view was that the operative statute was the special Wildlife Refuge Act of 1935, already providing for payment of 25 percent of net revenues to the affected counties.

3. At the outset, it is not entirely clear that the Mineral Leasing Act of 1920 was ever meant to embrace lands withdrawn for wildlife refuges. Given the vagueness of the terms employed, the exact scope of that statute has been much debated since its enactment. Thus, Section 1 of the Act, 41 Stat. 437-438, now 30 U.S.C. 181, as originally enacted, embraced all "lands * * * owned by the United States" containing specified minerals, "including those in na-

tional forests, but excluding lands acquired under * * * the Appalachian Forest Act [or Weeks Act] * * * and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes." On this language, it was open to argue that the Act—including the distribution formula in Section 35, 41 Stat. 450, now 30 U.S.C. 191—applied to "acquired lands" of the United States, to lands within Indian Reservations held in trust by the United States, and to submerged lands offshore. Yet, it was early decided that the 1920 Act should be deemed to govern only "public lands," excluding all three of these categories.[23] And Congress acted on that assumption when it later enacted special laws governing mineral leasing of Indian lands, acquired lands and offshore submerged lands, without purporting to amend the 1920 Act.[24]

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[23] See Op. Solic. Interior Dep't A-2592 (Feb. 12, 1924) and 34 Op. Att'y Gen. 171 (May 12, 1924) with respect to lands within Indian Reservations established by Executive Order; 50 Pub. Lands Dec. 308, 315 (Mar. 12 and 21, 1924) and 40 Op. Att'y Gen. 9 (Jan. 3, 1941) with respect to acquired lands; Op. Solic. Interior Dep't M-34985 (Aug. 8, 1947) and 40 Op. Att'y Gen. 540 (Aug. 29, 1947) with respect to offshore submerged lands.

[24] Thus, the three subsequent general statutes dealing with mineral leases of Indian lands do not refer to the Mineral Leasing Act of 1920. Act of May 29, 1924, ch. 210, 43 Stat. 244, 25 U.S.C. 398; Act of March 3, 1927, ch. 299, 44 Stat. 1347, 25 U.S.C. 398a-398c; Act of May 11, 1938, ch. 198, 52 Stat. 347, 25 U.S.C. 396a-396g. So, also, the Outer Continental Shelf Lands Act of August 7, 1953, ch. 345, 67 Stat. 462, 43 U.S.C. 1331-1343, makes no mention of the 1920 Act. To be sure, the Mineral Leasing Act for Acquired Lands of August 7, 1947, ch. 513, 61 Stat. 913, 30 U.S.C. 351-359, explicitly refers to the earlier statute. See Section 2, 30 U.S.C. 351. But there is no repeal or amendment: the new law only

It is at least arguable that a like approach should be followed with respect to mineral leasing within wildlife refuges. Indeed, the rationale of the Opinions of Attorneys General Stone and Jackson, confining the Mineral Leasing Act of 1920 to open "public domain" lands—as the preamble of the statute suggests (41 Stat. 437)—and thereby excluding from its coverage both acquired lands and lands withdrawn for a special purpose, would seem to apply to wildlife refuges, whether created from lands purchased or areas segregated from the "public lands." See 34 Op. Att'y Gen. at 171-175; 40 Op. Att'y Gen. at 10-14. See, also, *Justheim* v. *McKay*, 123 F. Supp. 560, 564-565 (D.D.C. 1954), aff'd, 229 F.2d 29 (D.C. Cir. 1956). The failure specifically to focus on wildlife refuges is easily explained when one remembers how relatively few such reserves then existed and how remote was the prospect of mineral exploration there.[25]

If this is right, areas withdrawn from the public domain for wildlife purposes would automatically be excluded from the distribution formula of the 1920 Act. Instead, the matter would be governed entirely by Section 401 of the Act of June 15, 1935, ch. 261, 49 Stat. 383, which provided a distribution scheme for refuge revenues "from the sale or

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reaches acquired lands to "which the 'mineral leasing laws' [defined as including the 1920 Act] have not been extended." *Ibid.*

[25] Of the 576 areas today that are part of the National Wildlife System, only about 35 pre-date the 1920 Act, and most of them are very small reserves. No oil and gas leases were granted affecting any refuge until 1947. The only apparent exception involves five leases within the Hewitt Lake Refuge in Montana, but these were granted long before the land was withdrawn in 1938. See H.R. Rep. No. 1941, 84th Cong., 2d Sess. 2, 5, 14-19, 21 (1956).

other disposition" of natural resources and receipts "from other privileges," and impliedly conferred or confirmed authority to make such arrangements.[26] Although oil and gas leases are not mentioned, it is clear that this provision was intended to give the administering agency—then the Department of Agriculture—broad power to make "disposition of surplus animals and products on these reservations or refuges upon such terms and conditions as [it] shall determine to be for the best interests of the Government." H.R. Rep. No. 886, 74th Cong., 1st Sess. 3 (1935). See, also, S. Rep. No. 822, 74th Cong., 1st Sess. 3 (1935). By 1946, the Department of the Interior—since 1939 the custodian of such refuges[27]—had formally ruled that oil and gas leases could be granted on wildlife refuge lands under the 1935 Act. Op. Solic. Interior Dep't M. 34516 (Felix Cohen, Aug. 5, 1946) (J.A. 68-72).[28] And that view appar-

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[26] In relevant part, the Section provided:

> That 25 per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, administered by the Bureau of Biological Survey of the United States Department of Agriculture, shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated. * * *

[27] See Reorg. Plan No. 2 of 1939, Section 4(e)-(f), 4 Fed. Reg. 2731 (1939).

[28] The ruling expressly dealt with acquired lands, which, as the Solicitor recognized, could not be leased under the Mineral Leasing Act of 1920, and had not yet been dealt

ently prevailed for at least the next decade,[29] with seeming congressional endorsement.[30]

4. It may well be that, in 1964, Congress acted on this understanding that the Mineral Leasing Act

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with by the Mineral Leasing Act for Acquired Lands, passed a year later. But it is clear that Section 401 of the 1935 Act made no distinction between refuges made up of reserved public lands and those established out of acquired private or State lands. If it authorized mineral leasing on any wildlife refuges, it did so for all—and mandated the same revenue sharing formula for all refuges.

[29] The Chief Counsel of the Fish and Wildlife Service so advised in a Memorandum of July 6, 1951 (J.A. 87-91). So did the Administrative Assistant Secretary of the Interior in a letter of August 14, 1951, seeking the opinion of the Comptroller General (J.A. 73-81). In the course of hearings in 1956 on bills that would have prohibited oil and gas development within wildlife refuges, counsel for the Fish and Wildlife Service asserted that "[u]nder this authorization [the 1935 Act], the Secretary of the Interior could and did issue oil and gas leases." He went on to explain: "This authorization is not a substitute for the authorizations contained in the Mineral Leasing Act, but is applicable in those instances where the Mineral Leasing Act is not applicable, namely, where withdrawals of public domain included mineral entry and leasing and on acquired lands." *Wildlife Refuge Disposal Policy: Hearings on H.R. 5306, H.R. 6723 and H.R. 8839 Before the House Comm. on Merchant Marine and Fisheries*, 84th Cong., 2d Sess. 137 (1956) (hereinafter "1956 Hearings").

[30] In 1956, the House Committee on Merchant Marine and Fisheries, after full hearings, summarized the legal position in these words: "Under the law there are, generally speaking, three types of outside interests which may be granted in lands administered through the Fish and Wildlife Service. * * * The third [type] embraces the grant of privileges (typified by oil and gas leasing) for commercial use * * *." H.R. Rep. No. 1941, 84th Cong., 2d Sess. 3-4 (1956). Presumably, the reference is to Section 401 of the 1935 Act, *supra*.

of 1920 was wholly inapplicable to wildlife refuges. Perhaps more likely, however, is the alternative view that, although the 1920 Act authorized oil and gas leases of reserved acreage on refuges and governed those activities in all other respects, the 1935 Act, since its enactment, had dictated the apportionment of revenues from such leases. That is more consistent with this Court's ruling in *Udall* v. *Tallman*, 380 U.S. 1, 4 & n.3 (1935),[31] and would sufficiently explain the absence of any express recognition that the 1964 amendment to the Wildlife Refuge Revenue Sharing Act was changing the distribution formula for mineral revenues from reserved lands.

There is, indeed, some evidence that Congress was told, and apparently accepted the proposition, that the 1935 Act already apportioned 25 percent of oil and gas lease revenues to the affected counties embracing reserved refuge lands. Thus, in 1956, in a public circular, which was submitted to Congress, the Fish and Wildlife Service stated that the "privileges" authorized to be granted on wildlife refuges by the 1935 Act "include oil and gas leasing." 1956 Hearings,

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[31] The statement in *Tallman* to the effect that the 1920 Act authorized oil and gas leasing on the Kenai Moose Range, withdrawn from the public domain in 1941, who wholly unnecessary to the only issue before the Court: whether and when, as a matter of *Executive* decision, the refuge had been opened to leasing. Nothing turned upon whether it was the 1920 Act or the 1935 Act that empowered the Secretary to grant mineral leases. Nevertheless, the premise accepted by all parties and by the Court was that the 1920 Act controlled, and it may be supposed that such a widely shared view was also indulged by Congress at the same period. On the other hand, *Tallman* did not remotely address the question whether the revenues received by the United States ought to be distributed in accordance with 30 U.S.C. 191 or 16 U.S.C. 715s.

supra, at 271 (R. 932). Within the Department of the Interior, that opinion apparently still prevailed in 1964, witness the advice given the Secretary by his senior staff that the pending amendment would have no effect on refuges made up of "public lands" because "25 percent of revenues" from such areas, "including timber and mineral receipts," would continue to be paid to the affected counties, "as under present law" (J.A. 92).[32] It would be natural if that view of the existing scheme communicated itself to the Congress during the 1962, 1963 and 1964 hearings, even if only by inference.

Thus, the Interior Department repeatedly stated that "[w]ith minor exceptions, receipts collected from both reserved public lands and acquired lands in the refuge system are subject to the provisions of section 401 of the 1935 act," and that representation was

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[32] The Interior Department memorandum, dated February 20, 1964, was commenting on the recommendations submitted two days earlier to both the Senate and House Committees by county government representatives, specifically urging an express provision in the legislation to the effect that "[m]ineral receipts * * *, whether from reserved lands or acquired lands, should be shared on the present 25-percent basis with the counties in the particular area of the [wildlife refuge] system from which such receipts are derived." *More Equitable Payments to Counties Having Wildlife Refuges: Hearing on S.179, S.1363, S.1720 and S.2498 Before the Senate Comm. on Commerce*, 88th Cong., 2d Sess. 100 (1964) (hereinafter "1964 Senate Hearings") (R. 877); *Participation by Counties in Refuge Receipts: Hearings on H.R. 1127, H.R. 2393, H.R. 5996, H.R. 9030 and H.R. 11008 Before the Subcomm. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries*, 88th Cong., 2d Sess. 72, 111 (1964) (hereinafter "1964 House Hearings") (R. 725, 764).

reproduced in all of the Committee Reports.[33] On several occasions, Department spokesmen flatly described the existing law as providing for payment of 25 percent of net revenues to counties in the case of reserved refuge lands and asserted that the pending bills would effect no change.[34] While mineral resources from such areas were never explicitly mentioned, the Congress was made aware that, in recent years, the single most important source of total refuge "receipts" distributed under the 1935 Act was oil and gas leasing.[35] Yet, it was at no time suggested that revenues from such leases on reserved lands were not included because subject to distribution under a different statute. In several hundred pages of hearings, covering three years, no Interior Department official and no Member of either House ever noted this distinction. On the contrary, the Secretary of the Interior implied that 25 percent of net revenues from "oil production" on all refuges were distributed to counties "under existing law, enacted in 1935." [36] In

[33] See S. Rep. No. 1919, *supra*, at 2, 13 (R. 399, 410); H.R. Rep. No. 2499, *supra*, at 4 (R. 390); H.R. Rep. No. 1753, *supra*, at 14 (R. 603); S. Rep. No. 1096, *supra*, at 25 (R. 638).

[34] See, *e.g.*, *Fish and Wildlife Legislation: Hearings on S.2138, S.2678, S.2770, S.2927 and S.3201 Before a Subcomm. of the Senate Comm. on Commerce*, 87th Cong., 2d Sess. 55 (1962) (hereinafter "1962 Senate Hearings") (R. 464); 1962 House Hearings, *supra*, at 68, 75-76 (R. 548, 555-556); 1964 Senate Hearings, *supra*, at 56, 58 (R. 833, 835); 1964 House Hearings, *supra*, at 41, 43, 50 (R. 694, 696, 703).

[35] 1964 House Hearings, *supra*, at 84 (R. 738). See, also, *id.* at 68 (R. 721); 1964 Senate Hearings, *supra*, at 56 (R. 833), 58 (R. 835); 1962 House Hearings, *supra*, at 70 (R. 550), 76 (R. 556), 83 (R. 563).

[36] 1964 Senate Hearings, *supra*, at 19 (R. 795); 1964 House Hearings, *supra*, at 34 (R. 687). That was, indeed, what the Secretary had been told by his senior staff the day

these circumstances, it may be a fair inference that everyone concerned believed the addition of the word "minerals" in 16 U.S.C. 715s was no more than a "perfecting provision", as the Interior Department reports stated.

5. To be sure, the actual mineral leasing practices with respect to wildlife refuges were not consistent. As one congressional committee summarized the matter after a full investigation in 1956, "[t]he record of the hearings is a picture of extreme administrative confusion." H.R. Rep. No. 1941, *supra*, at 10. See, also, *Udall* v. *Tallman*, *supra*, 380 U.S. at 4-16. It appears that the Department of the Interior, in some cases, was following the distribution scheme of the 1920 Act—as indeed, it did with respect to mineral revenues from the Kenai Moose Range for some years even after 1964. But these occasional administrative errors (if such they were) no more resolve the question whether, as a matter of law, the distribution of revenues from wildlife refuges made up of withdrawn public domain lands was governed by the 1920 Act before 1964, than did the unauthorized granting of leases under the 1920 Act over Indian Reservation lands and acquired lands, ruled improper by Attorneys General Stone and Jackson. And, in light of the contradictory representations made to it in the previous decade, it can hardly be asserted that Congress, in 1964, accepted the proposition that revenues from reserved wildlife refuges were subject to the distribution formula of the 1920 Act.

The upshot is that, in amending the Wildlife Refuge Revenue Sharing Act in 1964, the legislative branch

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before he testified before the Senate Committee and two months before he appeared at the House hearings. See Memorandum to the Secretary of February 20, 1964 (J.A. 92); note 32, *supra*.

was clarifying a very doubtful point. It was unnecessary to resolve the question what *had been* the law: the important objective was to settle the matter for the future. In this situation, it was appropriate to avoid the language of repeal or amendment. Ideally, the operative section should have opened with the words "Notwithstanding any other provision of law, * * *." But, as it seems to us, Congress expressed its meaning clearly enough by introducing an unambiguous prospective rule with the phrase "Beginning with the next full fiscal year and for each fiscal year thereafter, * * *."

We do not suggest that the Court need determine the true rule for sharing mineral resources from "reserved" refuge lands as it existed before 1964. There is no claim here that requires resolving that difficult question. Our submission is simply that the unambiguous action of the Congress in amending the Wildlife Refuge Revenue Sharing Act in 1964 henceforth subjected mineral revenues to the same distribution scheme as other receipts from "public land" refuges, and that the failure to specify that this was a change of law reasonably may be attributed to congressional ambivalence about the previous rule. Whether such a doubt was well founded does not matter: it is enough if—as we have sought to show—the legal situation, as it was seen in 1964, was sufficiently unclear that the 88th Congress may be supposed to have eschewed the thorny task of unravelling the past and was content to settle the future.

6. That the rule for the future *was* settled is clear —whether or not it was a change in law. It is unfortunate that, for a decade, the Department of the Interior failed to implement the 1964 statute as it affected oil and gas revenues from the Kenai Range. But no such practice is self-validating. *SEC* v. *Sloan*, 436 U.S. 103, 117-119 (1978); *Adamo*

Wrecking Co. v. *United States*, 434 U.S. 275, 287-288 n.5 (1978); *Dixon* v. *United States*, 381 U.S. 68, 78 (1965). Certainly, administrative errors involving unauthorized payments from the federal Treasury cannot go uncorrected. *Atlantic Richfield Co.* v. *Hickel*, 432 F.2d 587, 591-592 (10th Cir. 1970). As this Court has stated, there is a "duty [on the part] of all courts to observe the conditions defined by Congress for charging the public treasury." *Federal Crop Ins. Corp.* v. *Merrill*, 322 U.S. 380, 385 (1947). The United States can always retrieve money its officials have mistakenly paid out. *United States* v. *Wurts*, 303 U.S. 414, 415-416 (1938); *Wisconsin Central R. R.* v. *United States*, 164 U.S. 190, 212 (1896); *Wilson Clinic & Hosp., Inc.* v. *Blue Cross of South Carolina*, 494 F.2d 50, 52 (4th Cir. 1974); *Atlantic Richfield Co.*, *supra*, 432 F.2d at 592.

At all events, there is every indication that the treatment of mineral revenues from the Kenai Range until 1975 was not the consequence of a considered administrative evaluation of the 1964 amendment. Rather, it merely continued the previous practice, itself perhaps erroneous and apparently at odds with the views then entertained by the head of the Department. A more reliable indication of the administrative construction of the 1964 amendment to the Wildlife Refuge Revenue Sharing Act is to be found in the first careful and thorough consideration of the matter in 1975—however belated that may have been. This Court has recognized that agency reversals of its earlier statutory interpretations are entitled to judicial deference when there has been a "detailed and comprehensive" reevaluation. *Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979). See, also, *NLRB* v. *Local 103, International Ass'n of Iron*

Workers, 434 U.S. 335, 351 (1978). The formal opinions of the Solicitor of the Department of the Interior and of the Comptroller General (Pet. App. 26a-58a), now followed by the Department, must be accepted as the definitive administrative statement. In our submission, they warrant confirmation in this Court.

C. THE ALLEGED CONFLICT WITH THE ALASKA STATEHOOD ACT AND ALASKA NATIVE CLAIMS SETTLEMENT ACT

Finally, we turn to the suggestion—noted but not resolved in the courts below (Pet. App. 11a, 25a n.4)—that our construction of the Wildlife Refuge Revenue Sharing Act would conflict with the Alaska Statehood Act (72 Stat. 339) and the Alaska Native Claims Settlement Act (ANCSA) (85 Stat. 668, 43 U.S.C. 1601 *et seq.*). The argument is that Section 28(b) of the Statehood Act and Section 9(d) of ANCSA (43 U.S.C. 1608(d)) require that all mineral revenues derived from public lands in Alaska, including wildlife refuges, be distributed in accordance with Section 35 of the Mineral Leasing Act of 1920 (30 U.S.C. 191). What is more, it is claimed that the Statehood Act embodies an irrevocable "compact," under which Alaska is entitled to 90 percent of mineral revenues generated on public lands of the United States within that State. (See Alaska's brief in the court of appeals, at 42-44.)

1. Section 28(b) of the Alaska Statehood Act (72 Stat. 351) provides as follows:

> Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately be-

> fore the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

This merely substituted the State for the Territory of Alaska, which, by earlier enactments, enjoyed 52½ percent of the mineral revenues distributed under the 1920 Act, in addition to the then usual 37½ percent returned to every State. See Act of May 27, 1947, ch. 83, 61 Stat. 119; Act of July 10, 1957, Pub. L. No. 85-88, Section 2, 71 Stat. 282.

The provision is not in terms a "compact." Compare Section 4 of the Act, 72 Stat. 339. Nor is there anything in Section 28(b) that fixes Alaska's share of mineral revenues more irrevocably than is the case for any other State. Indeed, in enacting ANCSA in 1971, Congress felt free directly to diminish the State's share by granting an overriding 2 percent royalty to the Alaskan Natives (see 43 U.S.C. 1608 (d)), Alaska's objections being overruled.[37] If that was possible, it was certainly open to the federal

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[37] Alaska then advanced the same argument against ANCSA as it does today against the Wildlife Refuge Revenue Sharing Act. See *Alaska Native Land Claims: Hearing on S.1830 Before the Senate Comm. on Interior and Insular Affairs*, 91st Cong., 1st Sess. 260, 264-267, 404, 572 (1969). In response, the Interior Department argued that Section 28(b) of the Statehood Act "was not intended to be a substantive provision, does not operate as such, and furthermore does not come within the compact at all. Thus, Congress is free to deal with revenues under the Mineral Leasing Act in any manner which it deems advisable, whether or not such action would result in amendment of Section 28(b) of the Statehood Act." *Alaska Native Land Claims: Hearing on S.1830 Before the Senate Comm. on Interior and Insular Affairs, supra*, at 573-574. Congress evidently agreed. Alaska did not challenge the provision in judicial proceedings, as the Act invited the State to do within one year. 43 U.S.C. 1609(a).

legislature to effect the change here complained of (asssuming any change occurred).

We stress that, on its face, Section 28(b) of the Statehood Act only reaches revenues *distributed under Section 35 of the 1920 Act*, which, under our submission, does not govern (and perhaps never governed) receipts from oil and gas leases of wildlife refuge lands. Plainly, Congress could remove refuges from the sway of the 1920 Act, just as it could wholly bar mineral development there.[38] Indeed, the Secretary of the Interior, on his own authority, could close any or all refuges to oil and gas leasing, and thereby effectively reduce, or eliminate, Alaska's revenues from this source. See *Udall* v. *Tallman*, *supra*, 380 U.S. at 4. The upshot is that Alaska had no vested right in any mineral revenues from federal wildlife refuges in the State and has no cause to complain.[39]

2. Alaska's reliance on Section 9(d) of ANCSA is equally misplaced. See Br. in Opp. 14. That provision stipulated that all mineral revenues "received by the United States after December 18, 1971, from the disposition by it of such minerals in public lands

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[38] Alaska's claim to a share of federal mineral revenues could equally be defeated by a disposition of the producing lands to private purchasers or by dedicating the area to a purpose inconsistent with mineral development, as by establishing a National Park or Monument. See 30 U.S.C. 181.

[39] Alaska's claim under Section 317(a) of the Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2770-2771, 30 U.S.C. 191, is even weaker. See Br. in Opp. 12. That provision amended Section 35 of the Mineral Leasing Act and reaffirmed Alaska's right to 90 percent of the revenues distributed pursuant to that Section. But, if wildlife refuge revenues were removed from that distribution scheme in 1964 (or earlier), the 1976 law obviously did not reach them.

in Alaska shall be distributed as provided in the Alaska Statehood Act". But if the 1964 Refuge Act amendment removed mineral revenues generated on reserved wildlife refuges from distribution under the Statehood Act, obviously, the royalty provision established under ANCSA does not apply to these receipts. At all events, the Alaska Native Fund is entitled to receive no more than $500,000,000 under ANCSA. Section 9(g), 43 U.S.C. 1608(g). And as of June 30, 1980, the Alaska Native Fund was fully paid. See Appendix B, *infra*.

In sum, nothing in either Section 28(b) of the Alaska Statehood Act or Section 9(d) of the Alaska Native Claims Settlement Act mandates that mineral revenues from reserved wildlife refuge lands in Alaska be distributed under Section 35 of the Mineral Leasing Act.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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Assistant Attorney General

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Attorneys

NOVEMBER 1980

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 77-3265
78-1443

KENAI PENINSULA BOROUGH

v.

ANDRUS, ET AL.

and

ANDRUS, ET AL.

v.

STATE OF ALASKA

AFFIDAVIT OF LYNN A. GREENWALT

Lynn A. Greenwalt, being first duly sworn, deposes and says:

1. I am the Director of the United States Fish and Wildlife Service of the Department of the Interior, with offices in Washington, D.C. As Director of the Fish and Wildlife Service, I am authorized to exercise all the authorities of the Secretary of the Interior as they relate to fish and wildlife programs, including the administration of the Refuge Revenue Sharing Act, 16 U.S.C. 715s.

2. In 1964, there were 449 areas within the National Wildlife Refuge System. In the "lower 48" States, there were a total of 431 such areas, of which 165 were on reserved public lands. At present there are 576 areas within the National Wildlife Refuge

System. In the "lower 48" States, there are a total of 558 such areas, of which 185 are on reserved public lands.

3. The mineral revenues generated by all wildlife refuges consist entirely of oil and gas revenues.

4. In 1964, there were 18 national wildlife refuges located within the State of Alaska, all of which were on reserved public land. At present there are still 18 national wildlife refuges within the State of Alaska, all of which are on reserved public lands.

5. The only refuge in Alaska generating oil and gas revenues is the Kenai National Moose Range. In fiscal year 1964, it generated $3,813,290 in revenues.

6. In the "lower 48" States, refuges on reserved public lands generated $3,143 in oil and gas revenues in fiscal year 1964. In the 10-year period (fiscal years 1966-1975) following enactment of the 1964 amendment, 78 Stat. 701, to the Act of 1935, oil and gas revenue for refuges on reserved public lands in the "lower 48" is accounted for in the following manner:

10-year Period	Hewitt Lake NWR, Montana	Salt Plains NWR, Oklahoma	Ouray NWR, Utah	TOTAL 10 Years
FY 66-75	$2,735.22	$36,406.96	$9,040.40	$48,182.58

/s/ Lynn A. Greenwalt
LYNN A. GREENWALT
Director, U.S. Fish and
Wildlife Service

Subscribed and sworn to before me, a Notary Public for the District of Columbia, this 6th day of July, 1978.

/s/ [Illegible]
Notary Public

My commission expires: 3/31/83

APPENDIX B

UNITED STATES GOVERNMENT
MEMORANDUM

Date: June 30, 1980

Reply to Attn of: Acting Chief, Division of Program Development & Implementation

Subject: Revenue Payments to the Alaska Native Fund

To: Chief, Division of Finance, BLM, Code 830

This is to advise you that the State of Alaska has made an advance payment of revenues required by Sections 6(a)(3) and 9 of the Alaska Native Claims Settlement Act, in the amount of $292,585,066.52. This, together with the amounts already collected, brings the total amount to $500,000,000.00, the limitation established by Section 6(a)(3) of ANCSA.

/s/ Ralph Sabers

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